ADVANCE SHEET HEADNOTE
September 13, 2021

2021 CO 65

No. 20SC261, *Harvey v. Centura*, No. 20SC784, *Manzanares v. Centura*—Hospital Lien Statute—Medicare as Secondary Payer—Primary Medical Payer of Benefits—Liability and Casualty Insurance.

These cases require the supreme court to examine the interplay between Colorado's hospital lien statute, § 38-27-101, C.R.S. (2020) (the "Lien Statute"), and the federal Medicare Secondary Payer statute, 42 U.S.C. § 1395y (2021) (the "MSP Statute"). Specifically, the court must decide whether, under Colorado's Lien Statute, a hospital must bill Medicare before it can file a lien against a patient who has been injured in an accident and whose primary health insurance is provided by Medicare.

The court now concludes that when Medicare is a patient's primary health insurer, the Lien Statute requires a hospital to bill Medicare for the medical services provided to the patient before asserting a lien against that patient. Such an interpretation is consistent with the language of the Lien Statute, which distinguishes between "the property and casualty insurer," on the one hand, and

"the primary medical payer of benefits," on the other, and also reflects the legislature's intent to protect insureds from abusive liens. Moreover, this interpretation yields no conflict between the Lien Statute and the MSP Statute. Hospital liens are governed by state, not federal, law, and merely enforcing the Lien Statute does not make Medicare a primary payer of medical benefits in violation of the MSP Statute.

Accordingly, the court reverses the decisions in the cases below.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2021 CO 65

Supreme Court Case No. 20SC261
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 19CA91

Petitioner:

Peggy Harvey,

v.

Respondents:

Catholic Health Initiatives d/b/a Centura Health-St. Anthony Hospital and Centura Health Corporation.

Judgment Reversed
en banc
September 13, 2021

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Supreme Court Case No. 20SC784
C.A.R. 50 Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 19CA1522
Pueblo County District Court Case No. 19CV30025
Honorable Allison P. Ernst, Judge

Petitioner:

Eileen Manzanares,

v.

Respondent:

Centura Health Corporation a/k/a Catholic Health Initiatives Colorado, d/b/a St Mary-Corwin Hospital of Pueblo, Colorado, d/b/a Centura Health-St Mary Corwin Medical Center.

Judgment Reversed
en banc
September 13, 2021

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JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 These cases require us to examine the interplay between Colorado's hospital lien statute, § 38-27-101, C.R.S. (2020) (the "Lien Statute"), and the federal Medicare Secondary Payer statute, 42 U.S.C. § 1395y (2021) (the "MSP Statute"). Specifically, we must decide whether, under our Lien Statute, a hospital must bill Medicare before it can file a lien against a patient who has been injured in an accident and whose primary health insurance is provided by Medicare.[1]

¶2 The Lien Statute provides that before a lien is created, every duly licensed hospital that treats a person injured through the negligence or other wrongful acts of another must first

> submit all reasonable and necessary charges for hospital care or other services for payment to the property and casualty insurer and the primary medical payer of benefits available to and identified by or on behalf of the injured person, in the same manner as used by the hospital for patients who are not injured as the result of the negligence or wrongful acts of another person, to the extent permitted by state and federal law.

§ 38-27-101(1).

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[1] We granted certiorari to review the following issue:

> Whether section 38-27-101(1), C.R.S. (2019), requires a hospital to bill Medicaid or Medicare for medical services before creating a lien against the person who received the services when that person has other coverage but has Medicaid or Medicare as his/her predominant source of health coverage.

¶3 The parties dispute whether when, as here, Medicare is a person's principal source of health coverage, Medicare can be considered a "primary medical payer of benefits" under the Lien Statute (such that a hospital must bill Medicare before asserting a lien), or if such an interpretation is barred by the MSP Statute, which designates Medicare as a "secondary payer." § 1395y(b)(2).

¶4 We now conclude that when Medicare is a patient's primary health insurer, the Lien Statute requires a hospital to bill Medicare for the medical services provided to the patient before asserting a lien against that patient. Such an interpretation is consistent with the language of the Lien Statute, which distinguishes between "the property and casualty insurer," on the one hand, and "the primary medical payer of benefits," on the other, and also reflects our legislature's intent to protect insureds from abusive liens. Moreover, this interpretation yields no conflict between the Lien Statute and the MSP Statute. Hospital liens are governed by state, not federal, law, and merely enforcing our Lien Statute does not make Medicare a primary payer of medical benefits in violation of the MSP Statute.

¶5 Accordingly, we reverse the decisions of the division below in *Harvey v. Centura Health Corp.*, 2020 COA 18M, 490 P.3d 564, and of the district court in *Manzanares v. Centura Health Corp.*, No. 19CV30025 (D. Ct., Pueblo Cnty. July 16, 2019).

I. Facts and Procedural History

¶6 The facts in these two cases are similar and, in pertinent part, undisputed. Peggy Harvey and Eileen Manzanares were injured in separate car accidents when their cars were struck by other drivers. Each was then taken to a Centura-affiliated hospital (along with Centura Health Corporation, "Centura") for treatment. At the time they were treated by Centura, both women's health insurance was solely through Medicare and Medicaid. And both women's injuries resulted in hospital stays, with Harvey incurring $15,611.39 in medical expenses and Manzanares incurring $154,553.25 in such expenses.

¶7 In addition to the above-described health insurance, both Harvey and Manzanares had automobile insurance, Harvey through GEICO and Manzanares through State Farm. These policies included medical payment ("Med Pay") coverage for medical bills incurred as a result of a motor vehicle accident. In addition, the third-party tortfeasors who caused Harvey's and Manzanares's injuries also had automobile insurance.

¶8 Both Harvey and Manzanares advised Centura of all of the available health and automobile insurance policies. Centura then assigned the women's accounts to a collection agency, Avectus Healthcare Solutions, for processing, and Avectus apparently submitted Centura's medical expenses to each of the automobile insurers involved, including the automobile insurers for Harvey, Manzanares, and

the third-party tortfeasors. Within two weeks after submitting these charges to the various automobile insurers (and within two months of the women's respective discharges from their hospital stays), Centura filed hospital liens against both of the women. These liens stated that they were in favor of the pertinent hospital

> for all reasonable and necessary charges for hospital care upon the net amount payable to the injured person named below, his/her heirs, assigns or legal representatives, out of the total amount of any recovery or sum had or collected, or to be collected whether by judgment, settlement or compromise by said injured person, his/her heirs, assigns or legal representatives, as damages on account of such injuries.

Centura concedes that it did not bill either Medicare or Medicaid before filing the above-described liens.

¶9 Both Harvey and Manzanares subsequently brought suit, alleging that Centura had violated the Lien Statute by not billing Medicare for the services provided to the women prior to filing the above-described liens.[2] In their respective complaints, each woman asserted that (1) the Lien Statute requires hospitals to bill both the property and casualty insurer and the primary medical

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[2] As noted above, Harvey and Manzanares were both Medicare and Medicaid recipients at the time of their injuries and treatment. Both women, however, received their primary health insurance through Medicare. Accordingly, we need not—and therefore do not—address when, if ever, a hospital is required to bill Medicaid before filing a lien.

payer of benefits before filing a lien and (2) Centura did not bill Medicare, the primary medical payer of benefits in her case, before asserting the lien at issue. Pursuant to section 38-27-101(7), each woman thus demanded judgment in the amount of two times the stated value of her respective lien.

¶10 Centura subsequently moved to dismiss both women's claims, the district courts treated Centura's motions as motions for summary judgment, and the courts ultimately granted those motions (the order in Harvey's case was issued approximately eight months earlier than the order in Manzanares's case). In so ruling, the district courts concluded that Centura had no obligation to bill Medicare before filing the liens at issue because (1) the Lien Statute requires only that hospitals bill primary medical payers of benefits if allowed under both state and federal law and (2) although the women's primary health insurer was Medicare, federal law required that Medicare be treated as a secondary payer.

¶11 Harvey appealed, but in a unanimous, published decision, a division of the court of appeals affirmed the district court's judgment in her case. *Harvey*, ¶ 1, 490 P.3d at 565. In so ruling, the division concluded that Centura did not violate section 38-27-101 because, although Medicare falls within the definition of a "payer of benefits" under that statute, it was not a *primary* payer of Harvey's benefits. *Id.* at ¶¶ 16, 27, 490 P.3d at 567, 569. Rather, it was a secondary payer because, in the division's view, under the MSP Statute, Medicare is a secondary

payer whenever other insurers (here, the automobile insurers) are responsible for providing primary coverage. *Id.* at ¶ 20, 490 P.3d at 567–68. Harvey then filed a petition for a writ of certiorari in this court, and we granted that petition.

¶12 While Harvey's case was pending on appeal but before the division had issued its opinion in that case, Manzanares also filed a notice of appeal. After briefing had been completed in Manzanares's appeal, a division of the court of appeals requested certification of that case to this court pursuant to section 13-4-109(1), C.R.S. (2020), and C.A.R. 50, noting that the precise question raised by Manzanares was, by that time, pending before this court in Harvey's case. We granted the division's request and transferred Manzanares's case to this court.

¶13 We now resolve both cases together.

II. Analysis

¶14 We begin by setting forth the applicable standards governing our review of motions for summary judgment and statutory construction. Applying those standards here, we conclude that the pertinent language of the Lien Statute is ambiguous, and thus we turn to our other tools of statutory construction. We then conclude that the Lien Statute required Centura to bill Medicare before filing liens against Harvey and Manzanares.

A. Applicable Legal Standards

¶15 We review orders granting motions for summary judgment de novo. *Ryser v. Shelter Mut. Ins. Co.*, 2021 CO 11, ¶ 13, 480 P.3d 1286, 1288. When, as here, the material facts are undisputed, "summary judgment is appropriate only when the pleadings and supporting documents show that the moving party is entitled to judgment as a matter of law." *Id.*, 480 P.3d at 1289.

¶16 We also review issues of statutory interpretation de novo. *Id.* at ¶ 14, 480 P.3d at 1289. "In construing a statute, our aim is to effectuate the legislature's intent." *Id.* To do so, "we consider the entire statutory scheme to give consistent, harmonious, and sensible effect to all of its parts." *Id.* We must also apply words and phrases in accordance with their plain and ordinary meanings, and we avoid constructions that would render any of the statutory language superfluous or that would lead to illogical or absurd results. *Elder v. Williams*, 2020 CO 88, ¶ 18, 477 P.3d 694, 698. If the statute is unambiguous, then we will apply it as written and need not resort to other tools of statutory construction. *Id.* "If the statute is ambiguous, however, then we may look to the legislature's intent, the circumstances surrounding the statute's adoption, and the possible consequences of different interpretations to determine the statute's proper construction. A statute is ambiguous when it is reasonably susceptible of multiple interpretations." *Id.* (citation omitted).

B. The Lien Statute and the MSP Statute

¶17 The Lien Statute provides, in pertinent part:

> Before a lien is created, every hospital duly licensed by the department of public health and environment . . . which furnishes services to any person injured as the result of the negligence or other wrongful acts of another person and not covered by the provisions of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., shall submit all reasonable and necessary charges for hospital care or other services for payment *to the property and casualty insurer and the primary medical payer of benefits* available to and identified by or on behalf of the injured person, in the same manner as used by the hospital for patients who are not injured as the result of the negligence or wrongful acts of another person, *to the extent permitted by state and federal law*.

§ 38-27-101(1) (emphases added).

¶18 By its plain language, the Lien Statute directs hospitals to bill *both* the property and casualty insurer *and* the primary medical payer of benefits. *Id.*; *accord Garcia v. Centura Health Corp.*, 2020 COA 38, ¶ 15, 490 P.3d 629, 633; *Harvey*, ¶ 15, 490 P.3d at 567. In addition, the statute requires hospitals to submit the above-described charges only "to the extent permitted by state and federal law." § 38-27-101(1).

¶19 Because both Harvey and Manzanares were Medicare recipients, the MSP Statute also applies in this case and informs our analysis of what is "permitted" under federal law.

¶20 As pertinent here, in a subsection titled, "Medicare secondary payer," the MSP Statute provides:

> Payment under this subchapter may not be made, *except as provided in subparagraph (B)*, with respect to any item or service to the extent that—
>
> (i) payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under paragraph (1), or
>
> (ii) payment has been made or can reasonably be expected to be made under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.

§ 1395y(b)(2)(A) (emphasis added).

¶21 Subparagraph (B)(i), in turn, states:

> The Secretary may make payment under this subchapter with respect to an item or service if a primary plan described in subparagraph (A)(ii) has not made or cannot reasonably be expected to make payment with respect to such item or service promptly (as determined in accordance with regulations). Any such payment by the Secretary shall be conditioned on reimbursement to the appropriate Trust Fund in accordance with the succeeding provisions of this subsection.

§ 1395y(b)(2)(B)(i).

¶22 And the Code of Federal Regulations specifies that "[p]rompt or promptly, when used in connection with primary payments, . . . means payment within 120 days after receipt of the claim." 42 C.F.R. § 411.21 (2021). During this so-called "promptly period," Medicare may not pay the medical expenses at issue if a liability or casualty insurer pays or is reasonably expected to pay them. *Wainscott v. Centura Health Corp.*, 2014 COA 105, ¶ 70, 351 P.3d 513, 527–28.

¶23 Notably, the MSP Statute does not provide for the creation or filing of hospital liens. Instead, it leaves that question to the states. *See* U.S. Dep't of Health & Human Servs., Ctrs. For Medicare & Medicaid Servs., *Medicare Secondary Payer (MSP) Manual* (the "MSP Manual"), ch. 2, § 40.2F (2016) https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals /downloads/msp105c02.pdf [https://perma.cc/6E59-7QDD] ("The MSP provisions do not create lien rights when those rights do not exist under State law. Where permitted by State law, a provider, physician, or other supplier may file a lien for full charges against a beneficiary's liability settlement.").

¶24 In the cases now before us, Harvey and Manzanares argue that Medicare was the primary medical payer of benefits in their cases and thus Centura could not properly file liens against them without first seeking payment from Medicare, which Centura could do under federal law after the promptly period. Centura, in contrast, asserts that the MSP Statute prohibited treating Medicare as a primary payer and that, therefore, it could not have been a "primary medical payer of benefits" under the Lien Statute. To resolve this dispute, we must determine the meaning of the phrase "primary medical payer of benefits," as that phrase is used in the Lien Statute.

¶25 The Lien Statute does not define this phrase. It does, however, define "payer of benefits" to mean:

(a) An insurer;

(b) A health maintenance organization;

(c) A health benefit plan;

(d) A preferred provider organization;

(e) An employee benefit plan;

(f) A program of medical assistance under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S.;

(g) The children's basic health plan, article 8 of title 25.5, C.R.S.;

(h) Any other insurance policy or plan; or

(i) Any other benefit available as a result of a contract entered into and paid for by or on behalf of an injured person.

§ 38-27-101(9). Centura does not dispute that both Medicare and Medicaid fall within this definition of "payer of benefits."

¶26 The question before us thus turns on the meaning of "primary medical." On this point, divisions of our court of appeals have reached different conclusions.

¶27 In Harvey's case, the division below concluded that, although the above-quoted definition of "payer of benefits" includes Medicare, "under federal law, Medicare is a secondary payer 'when another insurer is responsible for providing primary coverage.'" *Harvey*, ¶¶ 16, 20, 490 P.3d at 567 (quoting *Wainscott*, ¶ 68, 351 P.3d at 527). Accordingly, the division stated, "Reading section 38-27-101(1) in the context of the MSP provisions, we conclude that the

phrase 'primary payer' did not require Centura to submit charges to Medicare because—given the existence of other insurance in this case—Medicare is considered a secondary payer under 42 U.S.C. § 1395y(b)(2)." *Id.* at ¶ 21, 490 P.3d at 568.

¶28 In *Garcia*, ¶¶ 16, 27, 490 P.3d at 634–35, the division decided otherwise. There, the division opined that "the descriptor 'medical' narrows" the list of "payers of benefits" defined in the statute to only medical or health insurers, not liability insurers. *Id.* at ¶ 15, 490 P.3d at 633–34. The division added, "A patient's 'primary' health insurer is, according to common usage, the first or principal health insurer to be billed for medical treatments." *Id.* at ¶ 16, 490 P.3d at 634. The division therefore concluded that "under the plain language of the statute, when Medicare is the patient's primary health insurer, the General Assembly intended hospitals to bill Medicare before filing a lien against the patient." *Id.*

¶29 In our view, both of these readings of the statute are reasonable, and therefore the statute is ambiguous. Accordingly, we must look to additional tools of statutory construction, including the Lien Statute's legislative history and the consequences of a given interpretation, to determine the proper meaning of "primary medical." *Elder*, ¶ 18, 477 P.3d at 698. We begin with the legislative history.

¶30 Divisions of our court of appeals had historically understood the Lien Statute as intended "to protect hospitals that provide medical services to an injured person who may not be able to pay but who may later receive compensation for such injuries which includes the cost of the medical services provided." *Rose Med. Ctr. v. State Farm Mut. Auto. Ins. Co.*, 903 P.2d 15, 16 (Colo. App. 1994); *accord Wainscott*, ¶ 29, 351 P.3d at 520. In 2015, however, Senate President Cadman and House Speaker Hullinghorst introduced a bill "[c]oncerning conditions that must be met before a hospital care lien is created." Ch. 260, sec. 1, § 38-27-101, 2015 Colo. Sess. Laws 981. In introducing this bill to the Senate Finance Committee, Senate President Cadman explained that the bill was intended to prevent hospitals from filing liens against patients before patients or their insurers have been given an opportunity to pay. Hearing on S.B. 15-265 before the S. Fin. Comm., 70th Gen. Assemb., 1st Sess. (Apr. 16, 2015) (statement of Senate President Cadman). Testimony revealed that, at that time, many hospitals had a practice of filing liens instead of billing patients' insurance plans. *Id.* (statements of Senate President Cadman, Summer Luther, and Mary Galloway). Several individuals described the impact that those liens had had on their lives, their businesses, and their credit. *Id.* (statements of Daniel Galloway, Mary Galloway, and Robert Shurtleff). Indeed, Senate President Cadman was one such impacted individual, and he told his colleagues about his personal experience

facing a lien after his son had been involved in a car accident. *Id.* (statement of Senate President Cadman). Senate President Cadman stated:

> [L]iterally the minute you check into a Colorado hospital for a situation, an injury or accident like this, you're a debtor. Before we left the hospital, the three hours my son was in there for a car wreck in a carpool going to school, him and the other six kids and their families were debtors. Before [we] even got the bill, we were debtors. Liens are a hammer, or why would they use them, right? Liens tell the whole world that you're a debtor.

Id. In addition, in presenting the bill to the full senate, Senate President Cadman told his colleagues "how egregious this can be. If you end up in a hospital . . . in Colorado, literally before you get the bill and before any [insurance gets] the bill, a lien is filed against you personally." 2nd Reading on S.B. 15-265 before S., 70th Gen. Assemb., 1st Reg. Sess. (Apr. 21, 2015) (statement of Senate President Cadman).

¶31 In the House Judiciary Committee, Chairman Kagan likewise expressed the view that "[i]t shouldn't be legal" for a hospital to file a lien before billing insurance. Hearing on S.B. 15-265 before H. Judiciary Comm., 70th Gen. Assemb., 1st Sess. (Apr. 28, 2015) (statement of Chairman Kagan). He stated, "[W]ith this bill here, it won't be legal. You will not be able to just routinely file a lien. All you have to do to be able to file a lien is bill the insurance company first. Then you can file a lien." *Id.* "And if there are no insurers, you can file a lien under any circumstances." *Id.*

¶32 In our view, this history reveals the General Assembly's primary intent to protect accident victims from the aggressive lien practices that some hospitals had employed at that time and tends to support the statutory construction advanced by Harvey and Manzanares in this case. Although the statute continues to protect the right of a hospital to be paid for the care that it provides, the statute also manifestly protects individuals from a "second injury, the lien. That comes with the insult." 2nd Reading on S.B. 15-265 before S., 70th Gen. Assemb., 1st Reg. Sess. (Apr. 21, 2015) (statement of Senate President Cadman).

¶33 Our construction is further supported by the consequences that would result from Centura's proposed interpretation. *See Elder*, ¶ 18, 477 P.3d at 698 (noting that we consider the consequences that would result from particular constructions of an ambiguous statute). Centura suggests that in cases like these, the Med Pay coverage contained in the applicable automobile insurance policies renders the automobile insurers the primary medical payers of benefits. To draw such a conclusion, however, Centura appears to read "primary medical payer of benefits," as that phrase is used in the Lien Statute, as "primary payer of medical benefits." We, however, are not at liberty to alter the wording of a statute. Nor may we interpret statutory language so as to render any of that language superfluous. Here, as noted above, the statute provides that hospitals must bill *both* "the property and casualty insurer *and* the primary medical payer of benefits."

§ 38-27-101(1) (emphasis added). If Centura's reading were correct, then property and casualty insurers, who in cases like those before us face liability for the injured parties' medical bills, would *always* be the primary medical payers of benefits, and the General Assembly would have had no reason to distinguish property and casualty insurers from the "primary medical payer of benefits." Because Centura's interpretation would therefore render the phrase "primary medical payer of benefits" superfluous, we cannot accept its construction. *See Elder*, ¶ 18, 477 P.3d at 698 (noting that "we avoid constructions that would render any words or phrases superfluous").

¶34 For all of these reasons, we conclude that when Medicare is a patient's primary health insurer, the Lien Statute requires a hospital to bill Medicare for the medical services provided to the patient before asserting a lien against that patient.

¶35 For several reasons, we are not persuaded otherwise by Centura's argument that this interpretation is preempted by federal law.

¶36 First, as noted above, the MSP Statute does not govern hospital liens; such liens are matters of state law. Moreover, nothing in the Lien Statute, or in our decision today, requires a hospital to bill Medicare at any point in time. To the contrary, a hospital is always free to forego that option and wait for payment from the liability and casualty insurer, recognizing that doing so presents a risk that the

hospital might not be paid by the liability or casualty insurers. Accordingly, we perceive no conflict between the Lien Statute and the MSP Statute.

¶37 Second, Centura correctly observes that, subject to certain exceptions, the MSP Statute prohibits Medicare from paying any hospital bills to the extent that "payment has been made or can reasonably be expected to be made under . . . an automobile or liability insurance policy or plan." § 1395y(b)(2)(A)(ii). But under our interpretation, nothing in the Lien Statute requires the hospital to bill Medicare if such payment will be made, or is expected to be made, by the property and casualty insurers. We merely conclude that under the Lien Statute, a hospital must bill any liability and casualty insurers—and thereafter, if the charges remain unpaid and the promptly period has expired, Medicare—before asserting a hospital lien.

¶38 In arguing to the contrary, Centura appears to conflate the terms in the Lien Statute with those in the MSP Statute, as, for example, by equating a "primary payer" under the MSP Statute with a "primary medical payer of benefits" under the Lien Statute. But a "primary payer" under the MSP Statute is not necessarily the same as a "primary medical payer" under the Lien Statute, and nothing in our interpretation changes the fact that under the MSP Statute, the liability or casualty insurer is the primary payer and Medicare is the secondary payer. Again, we

decide in this case only who the Lien Statute requires a hospital to bill before the hospital may assert a lien.

¶39 Third, our construction of the Lien Statute in no way conflicts with Congress's purpose in passing the MSP Statute, namely, "to reduce the costs of the Medicare program by making Medicare the secondary payer in certain situations." *Smith v. Farmers Ins. Exch.*, 9 P.3d 335, 338 (Colo. 2000). Under the MSP Statute, if Medicare pays an injured party's medical expenses in circumstances like those present here, then it is subrogated "to any right . . . of an individual or any other entity to payment with respect to such item or service under a primary plan." § 1395y(b)(2)(B)(iv). Accordingly, in circumstances like those present here, a hospital would receive, at a minimum, the amount that it is entitled to receive from Medicare, and Medicare could seek to be made whole through its subrogation rights, thus reducing any costs to the Medicare program.

¶40 We recognize that under our interpretation, (1) hospitals like Centura may be prohibited from filing most liens against Medicare recipients when Medicare is the recipient's primary source of health insurance (because under the applicable statutes, Centura cannot assert a lien before billing Medicare but then, once it bills Medicare, it is also precluded from asserting a lien for amounts representing charges for services covered by Medicare, although it can still assert a lien for any deductible or co-insurance amount); and (2) this could potentially result in

hospitals' inability to collect the full amount that they billed for medical expenses while the injured parties could potentially obtain a windfall (e.g., if they ultimately collect full damages from third parties). *See Holle v. Moline Pub. Hosp.*, 598 F. Supp. 1017, 1021 (C.D. Ill. 1984) ("Under its agreement with Medicare, the Hospital may not file a lien for amounts that represent charges for covered services for which Medicare has been billed by the provider, except for deductible or co-insurance amounts. Payment of the provider's charges by Medicare extinguishes the beneficiary's debt to the provider."). We conclude, however, that such a result is consistent with both the MSP Statute and the Lien Statute. As discussed above, federal law does not govern the creation of liens—that question is left to the states. *See* MSP Manual, ch. 2, § 40.2F. Thus, contrary to Centura's arguments, a hospital does not have a federal right to impose a lien against patients. And to the extent that our interpretation may, in some circumstances, result in a windfall for the injured party, for the reasons set forth above, we believe that the Lien Statute mandates that result. To the extent that the legislature intended otherwise, it can, of course, clarify its intent through further legislation.

¶41 The out-of-state cases on which Centura relies do not mandate a different result. For the most part, those cases are either inapposite, distinguishable, or compatible with our reasoning. For example, Centura cites *Meek-Horton v. Trover Solutions, Inc.*, 915 F. Supp. 2d 486 (S.D.N.Y. 2013), in support of its contention that

"[e]very other jurisdiction to consider this issue has concluded that state law ***cannot*** require a hospital to bill Medicare as a primary payer; any such requirement invokes federal preemption." That question, however, was not before the court in *Meek-Horton*. Rather, in that case, the court sought only to determine whether so-called Medicare Advantage organizations have a right of reimbursement for medical benefits paid to enrollees who later receive financial settlements from third-party tortfeasors. *Id.* at 490. The plaintiffs were a class of Medicare-eligible enrollees who had received monetary settlements from third-party tortfeasors. *Id.* at 487. The defendants were private health care insurers that administered Medicare Advantage plans and that sought reimbursement for medical benefits paid to the plaintiffs by placing liens on the plaintiffs' settlements. *Id.* Thus, no hospital was even a party in that case, and the question of whether a hospital could file a lien without first billing Medicare was not presented.

¶42 *United States v. Rhode Island Insurers' Insolvency Fund*, 80 F.3d 616 (1st Cir. 1996), is likewise inapposite. There, by statute, Rhode Island had created an Insurer's Insolvency Fund (the "Fund") to meet certain types of insurance claims filed against insurers that had become insolvent. *Id.* at 617–18. The litigation arose when, in paying the claims of certain beneficiaries of insolvent insurers, the Fund deducted the amounts paid to the beneficiaries by Medicare. *Id.* at 618. The United

States sued, challenging those deductions on the ground that the statutory provisions allowing such deductions, which purported to shift primary insurance coverage from the Fund to Medicare, were inconsistent with federal law and were thus preempted. *Id.* The court agreed, concluding that, by the Rhode Island statute's own terms, the Fund was deemed the insurer to the extent of the obligations under the policy on the covered claims and thus was a "primary plan" under the MSP Statute and its regulation. *Id.* at 623. Again, the case did not present any question analogous to the one now before us.

¶43 And to the extent that some of the cases cited by Centura tend to support its arguments here, for the reasons set forth above, we disagree with those cases, none of which are binding on us. *See, e.g.*, *Speegle v. Harris Methodist Health Sys.*, 303 S.W.3d 32, 38 (Tex. Ct. App. 2009) (suggesting, contrary to our analysis above, that hospitals have "a federal right to maintain their lien against [the patient's] liability insurance settlement in lieu of billing Medicare").

¶44 Finally, we are unpersuaded by Centura's arguments that (1) section 10-4-641, C.R.S. (2020), regarding Med Pay coverage, suggests the General Assembly's intent to define such coverage as the "primary medical payer of benefits" for purposes of the Lien Statute; and (2) our interpretation of the Lien Statute conflicts with section 10-4-641. Section 10-4-641(1), which appears in the statutes governing property and casualty insurance policies, provides, in part,

"Medical payments coverage shall be primary to any health insurance benefit of a person injured in a motor vehicle accident . . . ." As discussed above, in this case, the automobile insurance policies containing Med Pay coverage *were* primary to health insurance in the sense that Centura was required to bill those insurers before billing any health insurer. Moreover, section 10-4-641 itself recognizes that Med Pay coverage is not health insurance. *Id.* (distinguishing Med Pay coverage from an injured person's health insurance benefit). Accordingly, Centura's arguments regarding the Med Pay statute do not assist it here.

III. Conclusion

¶45 For these reasons, we conclude that when Medicare is a patient's primary health insurer, the Lien Statute requires a hospital to bill Medicare for the medical services provided to the patient before asserting a lien against that patient. This interpretation is consistent with the language of the Lien Statute and reflects the legislature's intent to protect insureds from oppressive hospital liens. In addition, this interpretation is consistent with the MSP Statute because hospital liens are governed by state, not federal, law and merely enforcing our Lien Statute does not make Medicare a primary payer of medical benefits in violation of the MSP Statute.

¶46 Accordingly, we reverse the decisions of the division below in *Harvey* and of the district court in *Manzanares*, and we remand these cases for further proceedings consistent with this opinion.